IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.987 OF 2007

Prakash Ramu Bendre, .. Petitioner.

Vs

Shaku @ Shakuntala Ananda Bendre and ors. .. Respondents

Mr P.D.Dalvi, for the petitioner.

CORAM : D.B.BHOSALE,J.

DATED : 04th JULY, 2007

P.C.:

1. Heard Mr Dalvi, learned counsel for the petitioner.

2. The petitioner has impugned an order dated 4.9.2006, by which a decree in R.C.S.No.57 of 1989 has been sent to the Collector for partition and separate possession afresh. Mr Dalvi, learned counsel for the petitioner, assailed the judgment solely on the ground that once a decree is completely satisfied the court becomes functus officio and, therefore, the court has no power to entertain fresh execution application. A clear answer to this submission is given by the Court below in the impugned order in paragraph 10 wherein the judgment of this Court in **Dhansukhbhai Patel V**

Fakir Bhai Patel, 2006 (1) AIR BOMBAY R.142 has been referred to. In view thereof, I find absolutely no merit in the contention urged by Mr Dalvi. Moreover, in paragraph 11 of the judgment the learned Judge has also recorded the reasons for sending the decree for partition and separate possession to the Collector afresh. Keeping that in view and considering the overall facts and circumstances of the case, no interference in writ jurisdiction under Article 227 of the Constitution of India is warranted. Hence, the writ petition is dismissed. The executing authority, however, shall consider the Darkhast afresh on merits in accordance with law and uninfluenced by the observations made in the impugned judgment.

(D.B.BHOSALE,J.)